IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9186 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RELIEF MERCANTILE CO OPERATIVEBANK LTD. (IN LIQUIDATION) - Petitioner(s)

Versus

DEPOSIT INSURANCE AND CREDIT GUARANTEE CORPORATION & 3 - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR HV CHHATRAPATI for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/06/2006

CAV JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner Co-operative Bank (in liquidation) through its

liquidator has prayed for an appropriate writ, direction or order quashing and setting aside the communication dated 9th July, 2002 addressed by the Reserve Bank of India to the petitioner Bank at Annexure-R to the petition by which the request of the petitioner bank for treating 19th April, 2000 as the date of refusal of license to the petitioner bank has been turned down and consequently, the claims of the depositors of the petitioner bank for deposit insurance under the Deposit Insurance Scheme 1961 will be considered only upto 4th May, 1999. The petitioner has also further prayed to declare that 19th April, 2000 as the date of rejection of petitioner's application for license by the respondent No.2 – Reserve Bank of India under Section-22 of The Banking Regulation Act, 1949 (hereinafter referred to as the “Act of 1949” for short) and Section-13(c) of The Deposit Insurance and Credit Guarantee Corporation Act, 1961 (hereinafter referred to as the “Deposit Insurance Act” for short). The

petitioner has also further prayed for an appropriate order directing the respondents i.e. Reserve Bank of India as well as Deposit Insurance and Credit Guarantee Corporation (hereinafter referred to as the “Corporation” for short) to consider the claims of the depositors of the petitioner Bank for deposit insurance under the Deposit Insurance Scheme, 1961 upto 19th April, 2000 under the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

2. Few facts are necessary for determination of the present special civil application which are as under :

Under Section-22 of the Act of 1949, save as provided, no company shall carry on banking business in India unless it holds a license issued in that behalf by the Reserve Bank and any such license may be issued subject to such conditions as the Reserve Bank may think fit to

impose. As per sub-section (2) of Section-22 of the Act every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in India, shall apply in writing to the Reserve Bank for a license under Section-22 of the Act. Accordingly, the petitioner made application for license under Section-22 of the Act of 1949 on 28th August, 1971. As per Section-22 of the Act, nothing in sub-section (1) of Section-22 shall be deemed to prohibit the company from carrying on banking business until it is granted a license in pursuance of Section-22 or is by notice in writing informed by the Reserved Bank that a license cannot be granted to it. Thus, unless and until the company is granted a license or is by notice in writing informed by the Reserve Bank of India that a license cannot be granted to it, it will be open for the said company which has submitted application for license under Section-

22 of the Act to carry on banking business. Thus, the petitioner carried on banking business from the date of application. The Reserve Bank of India addressed a letter to the Administrator of the petitioner bank dated 6th May, 1999 which was received by the petitioner bank on 11th May, 1999 inclusive therewith the order dated 4th May, 1999 rejecting the application of the petitioner bank for a license under Section-22 of the Act of 1949. Thus, the petitioner bank came to be informed in writing on 11th May, 1999 the decision of the Reserve Bank of India rejecting the application for license under Section-22 of the Act. Thus, technically speaking on and after 11th May, 1999 it was not open for the petitioner bank to carry on the banking business i.e. on notice in writing by the Reserve Bank of India rejecting the application of the petitioner for license under Section-22 of the Act. However, the petitioner challenged the order dated 4th May, 1999 passed by the respondent No.2 – Reserve Bank

of India received by the petitioner bank on 11th May, 1999 rejecting the application of the petitioner bank for license under Section-22 of the Act of 1949 by way of Special Civil Application NO.3761 of 1999 before this Court. The petitioner bank prayed for interim relief in terms of Para-19(B) to stay the implementation and operation of the order dated 4th May, 1999 pending hearing and final disposal of the said special civil application. The said Special Civil Application came to be filed on 15th May, 1999 and the same came up for hearing before the learned Single Judge of this Court on 18th May, 1999 and the following order came to be passed by the learned Single Judge.

"Notice. Pending admission ad-interim relief in terms of para-19(B) of the petition. Notice is made returnable on 22.6.1999. D.S. is permitted."

3. It seems that that said special civil application came up for hearing before the another learned Single Judge on 17th April, 2000 and no one remained present for the petitioner and therefore, the learned Single Judge vacated the exparte ad-interim relief order dated 18th May, 1999 and passed the following order.

> "No one is present for the petitioner even in the second round and second setting. Mr.H.V.Chhatrapati for respondents Nos.1 and 2. Mr.A.J.Desai, learned AGP for respondent Nos.3 and 4.
>
> No case is made out for continuing the ex-parte as interim order dated 18.5.1999. The ex-parte ad-interim order dated 18.5.1999 is hereby vacated.
>
> 17.4.2000 Sd/- M.R.Calla, J."

4. It appears that the petitioner preferred Civil Application No.2879 of 2000 in Special Civil Application No.3761 of 1999 for recalling the order dated 17.4.2000. However, the learned Single Judge by order dated 26.4.2000 rejected the said application and did not recall the order dated 17.4.2000 by which the exparte ad-interim order was vacated. Being aggrieved and dissatisfied with the order passed by the learned Single Judge dated 26th April, 2000 passed in Civil Application No.2879 of 2000 in Special Civil Application No.3761 of 1999 in not recalling the order dated 17th April, 2000 vacating the exparte injunction and/or stay the petitioner preferred the Letters Patent Appeal No.150 of 2000 and Division Bench of this Court by order dated 8.5.2000 dismissed the said Letters Patent Appeal. Thus, there was no stay of the further implementation and operation of the order passed by the Reserve Bank of India dated 4th May, 1999 on and after 17th April, 2000. By

order dated 22nd May, 2000 the Registrar, Co-operative Society, State Government passed the order of liquidation of the petitioner Bank and appointed the liquidator of the said Bank. The liquidator of the petitioner bank approached the Deposit Insurance and Credit Guarantee Corporation and the Reserve Bank of India and submitted claims of list of the depositors and considering the fact that the petitioner bank continued to run the bank and its banking business upto 17th April, 2000 pursuant to the ad-interim stay granted by this Court in aforesaid Special Civil Application submitted the list of depositors for settlement of their claims who have deposited their amount between 11th May, 1999 and 17th April, 2000 also and requested the Reserve Bank of India as well as Deposit Insurance Corporation to consider 17th April, 2000 as the date of rejection of their application for license under Section-22 of the Act so that all those depositors who have deposited their amount

after 11th May, 1999 their claims also can be considered by the Deposit Insurance Corporation. But by various communications the same came to be rejected and at last by impugned communication / order dated 9th July, 2002 the Reserve Bank of India rejected the request of the petitioner bank to treat 19th April, 2000 as the date of refusal of license to the petitioner bank, in other words, consequently refused to consider settlement of the claims of those depositors who have deposited their amount after 11th May, 1999. Being aggrieved and dissatisfied with the above rejection / communication dated 9th April, 2002, the petitioner bank in liquidation through liquidator has preferred the present special civil application under Article 226 of the Constitution of India for the aforesaid reliefs.

5. Shri A.K.Clerk, learned advocate appearing on behalf of the petitioner bank has vehemently submitted that the petitioner bank continued to

do banking business upto 17th April / 19th April, 2000 pursuant to the ad-interim stay granted by the learned Single Judge of this Court granted in Special Civil Application No.3761 of 1999 and therefore, the relevant date for the purpose of considering the settlement of the claims for deposit insurance is required to be considered as 19th April, 2000. Shri Clerk, learned advocate has also further submitted that the petitioner bank has carried out its banking operation from 18th May, 1999 to 19th April, 2000 as it was protected by ad-interim relief granted by this Court and during the said period, the petitioner bank has functioned normally and accepted new deposits and repaid the old deposits and continued the banking operations in routine manner. It is also further submitted that the petitioner bank has also filed monthly and quarterly reports for the said period with the Reserve Bank of India and the Reserve Bank of India has also never raised any objection to the petitioner bank for its carrying on its

banking transactions and banking business during the said period. Therefore, it is further submitted that the respondent No.2 – Reserve Bank of India is now estopped from claiming that rejection of claiming of application for license should be treated as 4th May, 1999. It is also further submitted by him that during the aforesaid period between 18th May, 1999 to 19th April, 2000 when the petitioner bank was carrying on its banking business under the protection of ad-interim order passed by this Court many small depositors have invested and/or deposited their amount with the petitioner bank and therefore, for no fault of them the said depositors cannot be made to suffer loss of protection of their deposits under the Deposit Insurance Scheme, 1961. It is also further submitted by him that in fact, if the relevant date is considered as 19th April, 2000, in that case, there will not be any loss to the Reserve Bank of India and/or even to the Insurance Corporation as in fact the insured

deposit on 11.5.1999 was Rs.176.44 crores and the liability of insured deposits as on 19th April, 2000 was reduced to 141.40 crores. Thus, the liability of insured deposits came to be reduced by Rs.35.04 Lakhs from 11.5.1999 to 19.4.2000. It is also further submitted by Shri Clerk, learned advocate for the petitioner that on 11.5.1999 the petitioner bank had outstanding insured deposit liabilities (of less than Rs.1.00 Lakh) of Rs.176.44 lakhs and out of these deposits, the Bank has repaid the insured deposits (of less than Rs.1.00 lakh) for an amount of Rs.118.96 Lakhs during the period from 11.5.1999 to 19.4.2000 (balance Rs.57.48 lakhs) and the Bank has accepted fresh deposits (of less than Rs.1.00 lakh) of Rs.83.92 lakhs during the period from 11.5.1999 to 19.4.2000 and therefore, as on 19.4.2000, the Bank had total insured deposits (less than Rs.1.00 lakh) of Rs.141.40 lakhs (Rs.57.48 lakhs + Rs.83.92 lakhs). It is also further submitted by him that no one should

be prejudiced by the `act of court' and therefore, it is requested that when pursuant to the order of this Court and/or under the protection of the ad-interim stay granted by this Court the petitioner bank continued to carry on its banking business and/or banking operations upto 19th April, 2000 and when so many small depositors have invested / deposited their amount, the relevant date for consideration of settlement of claims of deposits insurance is required to be considered as 19th April, 2000 i.e. till the date the bank continued to carry on its banking operations and therefore, it is requested to allow the present special civil application and to grant reliefs as prayed for directing the respondents No.1 and 2 to consider the claims of the depositors of the petitioner bank for deposit insurance under the Deposit Insurance Scheme of 1961 upto 19th April, 2000 under the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

6. Shri A.K.Clerk, learned advocate appearing on behalf of the petitioner has relied upon the following decisions of the Hon'ble Supreme Court in support of his submissions.

[1] M/S SHREE CHAMUNDI MOPEDS LTD V. CHURCH OF SOUTH INDIA TRUST ASSOCIATION, MADRAS, AIR 1992 SC 1439

[2] BPL LTD AND OTHERS V. R.SUDHAKAR AND OTHERS, (2004) 7 SCC 219

[3] RAVI S. NAIK V. UNION OF INDIA AND OTHERS, 1994 Supp (2) SCC 641.

7. Relying upon the judgment of the Hon'ble Supreme Court in case of M/S SHREE CHAMUNDI MOPEDS LTD V. CHURCH OF SOUTH INDIA TRUST ASSOCIATION (Supra), Shri Clerk, learned advocate for the petitioner has submitted that as held by

the Hon'ble Supreme Court while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. Relying on the judgment of the Hon'ble Supreme Court in case of RAVI S. NAIK (Supra) Shri Clerk, learned advocate has submitted that an order, even though interim in nature, is binding till it is set aside by a competent court and it cannot be ignored on the ground that the court which passed the order had no jurisdiction to pass the same.

8. Shri Clerk, learned advocate has heavily relied upon the recent decision of the Hon'ble Supreme Court in case of BPL LTD AND OTHERS (Supra) and has submitted that in view of the ad-interim order and/or ad-interim stay granted by this Court staying the operations of the order dated 4th May, 1999, the petitioner bank was permitted to carry on its banking business and/or banking operations and what is required to be considered is the effect of stay of the operation of the order dated 4th May, 1999 and therefore, when under the protection of the ad-interim order staying further implementation and operation of the order dated 4th May, 1999 if the petitioner bank continued its banking business and some depositors have invested the amount by way of deposits, their interest is required to be protected by way of settling their insurance scheme. It is also further submitted by him that for no fault of the depositors who have invested

their amount by way of deposits after 11th May, 1999, they should not be made to suffer and they cannot be deprived of the deposits insurance and therefore, it is requested to allow the present special civil application as prayed for.

9. Per contra, Shri S.B.Vakil, learned senior advocate appearing on behalf of the Reserve Bank of India as well as Deposit Insurance and Credit Guarantee Corporation while relying upon the affidavit-in-reply filed on behalf of the Deposit Insurance Corporation as well as the Reserve Bank of India has heavily relied upon the provisions of Section-13(c) and Section-16 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. Shri Vakil, learned senior advocate has submitted that by order dated 5th May, 1999 and communication dated 11th May, 1999 the Reserve Bank of India informed the petitioner Bank with regard to rejection of their application for license under Section-22 of the Act. It is also

further submitted by him that ad-interim relief order dated 18.5.1999 cannot be construed to revive the registration of the co-operative bank as insured bank which registration had stood cancelled when by notice in writing the Reserve Bank of India informed the bank that its application for grant of license has been rejected. He has also further submitted that passing of the stay order does not mean that the order of refusal of grant of license is wiped out and looses its existence. Any order of stay granted pending disposal of writ/suit or other proceedings comes to an end with the dismissal of the substantive proceeding and in such a case it will be the duty of the Court to put the parties in the same position they would have been but for the interim order of the Court. It is also further submitted that the petitioner cannot be allowed to claim any benefit on the basis of the ad-interim order, more particularly, when it was vacated. It is also further submitted that the

purpose of interim order is to preserve the interest of the parties in status quo and thereby to protect their interest pending the litigation and therefore, the relevant date is rightly held to be 11.5.1999. It is also further submitted that cancellation order dated 4.5.1999 passed by the Reserve Bank of India has been upheld by this Court and the effective date of cancellation has to be treated as 11.5.1999 when the order was communicated to the petitioner bank and the interim order would not have any relevance in the matter.

10. It is also submitted that the respondent Corporation is statutory corporation constituted under the provisions of the DICGC Act, 1961 and has statutory power to register a banking company including a co-operative bank as an insured bank subject to being satisfied about its eligibility for the same as per the provisions of the DICGC Act, 1961. That a co-operative bank registered in

terms of the provisions of said Act of 1961 is known as an “insured bank” and such term is defined under Section-2(i) of the Act of 1961. It is also further submitted that cancellation of registration of insured co-operative bank is governed by the provisions of Section-13-C of the Act of 1961 and accordingly, on cancellation of license of an insured co-operative bank by the Reserve Bank, registration of such insured bank, stands cancelled as a consequence thereof. It is also further submitted by Shri Vakil, learned senior advocate that cancellation of registration of the co-operative bank in terms of Section-13-C of the Act of 1961 takes place automatically by operation of law on the happening of any of the events referred to under clause (a) to clause (i) of the said Section-13-C and in terms of clause-(b) the registration of a co-operative bank as an insured bank shall stand cancelled if the bank has been informed by notice in writing by the Reserve Bank that the bank's license has been

cancelled under Section-22 of the Banking Regulation Act, 1949. It is further submitted that while registration of the Bank as an insured bank is automatic by operation of law, restoration of registration of an insured bank is not automatic. It is also further submitted that the deposits accepted by banks subsequent to cancellation of their license and consequential de-registration of such banks in terms of said Section-13-C(b) of the Act, 1961 would be considered to be without insurance cover unless the bank has obtained direction or approached the Corporation for restoration of its registration as an insured co-operative bank and the Corporation has restored the registration of the bank as an insured bank. It is also further submitted that liability of the Corporation in relation to the insured deposit, manner of payment by the Corporation in case of winding up of an insured co-operative bank, discharge of its liability by the Corporation in respect of the

payment of amount towards insured deposits of the petitioner bank etc. are all governed by the provisions of the DICGC Act of 1961 and the provisions of Regulation, 1961. The liability of the corporation in respect of the insured deposits, is to be determined in accordance with the provisions of Section 16(1) of the DICGC Act, 1961 read with sub-section (3) & (4) of the Section 17 of the Act. It is also submitted that as per Section-16 of the Act, and the proviso Section-16(1), the liability of the Corporation in respect of an insured bank referred to in Section 13(a), (b) and (c) of the Act, shall be limited to the deposits as on date of cancellation of the registration and the relevant date would be the date of intimation of the notice by the Reserve Bank to cancel the license and/or reject the license under Section-22 of the Act which is 11th May, 1999. It is therefore submitted that deposits accepted by the bank subsequent to cancellation of their license and

consequential de-registration of such bank in terms of Section 13(C)(b) of the Act, 1961, would be considered to be without insurance cover unless the bank has approached the Corporation for restoration of its registration as an `insured co-operative bank' and the Corporation has restored the same.

11. Shri Vakil, learned senior advocate has further submitted that on vacating the ad-interim order on 17th April, 2000, confirmed by the Division Bench of this Court and subsequently withdrawing of the main special civil application, would lead to only one consequence of restoring the position which was prevailing at the time of passing of the initial order of stay order which was prevailing prior to 18th May, 1999 and/or as on date on 18th May, 1999 and therefore, on vacating the ad-interim order, the order passed by the Reserve Bank dated 4th May, 1999 communicated on 11th May, 1999 rejecting the

application of the petitioner bank for license under Section-22 of the Act, 1949 will be restored and therefore, the respondent Nos.1 & 2 have rightly considered the relevant date as 11th May, 1999 for the purpose of considering the claims of the deposits insurance and as such, no illegality has been committed either by the Deposit Insurance Corporation and/or by the Reserve Bank.

12. Shri Vakil, learned senior advocate in support of his above submissions has placed reliance on the following decisions.

[1] COMMISSIONER OF INCOME-TX, MADRAS AND ANOTHER V. VINOD KUMAR DIDWANIA ET., AIR 1987 SC 1260

[2] MAHANADI COALFIELDS LTD V. ORIENT PAPER AND INDUSTRIES LTD AND OTHERS, 1995 Supp (2) SCC 717.

[3] GURSHARAN SINGH AND OTHERS V. NEW DELHI

MUNICIPAL COMMITTEE AND OTHERS , (1996) 2 SCC 459

[4] GURSHARAN SINGH AND OTHERS V. M.V.VYAVSAYA AND CO., (1997) 1 SCC 156 : AIR 1997 SC 993

[5] KANORIA CHEMICALS AND INDUSTRIES LTD AND OTHERS V. U.P.STATE ELECTRICITY BOARD AND OTHERS , (1997) 5 SCC 772

[6] UNION OF INDIA AND ANOTHER V. SAHAKARI KHAND UDYOG MANDALI LTD, 1980 (2) GLR 181

13. Relying upon the judgment of the Hon'ble Supreme Court in case of MAHANADI COALFIELDS LTD (Supra), it is submitted that as observed by the Hon'ble Supreme Court, the purpose of an interlocutory order is to preserve in status quo the rights of the parties during the pendency of the litigation, the Court is also required to put into the scales the need to protect the interest of the respondent before it if the writ petitions

ultimately fail and uncertainty as to their results is resolved in such respondent's favour. Relying upon the decision of the Hon'ble Supreme Court in case of GURSHARAN SINGH AND OTHERS (Supra), it is submitted that an act of court shall prejudice no man and that exparte ad-interim relief granted by the learned Single Judge which was subsequently vacated shall not prejudice the respondents by the liabilities to pay the deposit insurance to the depositors who have deposited their amount after 11th May, 1999, more particularly, when the exparte ad-interim stay was granted the Reserve Bank was not heard and that even the Deposit Insurance Corporation was also not heard. Relying upon the judgment of the Hon'ble Supreme Court in case of GURSHARAN SINGH AND OTHERS (Supra), it is also further submitted that as observed by the Hon'ble Supreme Court, no one should be allowed to suffer for an act of court and that interim orders are always subject to the final order and therefore, by ad-

interim order granted by the learned Single Judge staying the order dated 4th May, 1999 communicated on 11th May, 1999 which subsequently came to be vacated, the respondents should not be made to suffer because of the said exparte ad-interim stay. Relying on the decision of the Hon'ble Supreme Court in case of KANORIA CHEMICALS AND INDUSTRIES LTD AND OTHERS (Supra), it is submitted that as observed by the Hon'ble Supreme Court while considering the effect of the interim or interlocutory order or injunction, the contention is when the ad-interim stay order was granted and subsequently the petition came to be dismissed, interim order only rendered the Government order / notification inoperative (which was stayed) from the date of passing of the stay order and did not wipe out the Government order / notification and on dismissal of the petition, it is the duty of the Court to maintain status quo ante. Relying on the aforesaid observations, it is submitted that on

granting of ad-interim stay by the learned Single Judge in aforesaid Special Civil Application staying the order passed by the Reserve Bank dated 4th May, 1999, during the period the stay was in existence of the said order was not set aside but the implementation was stayed for some time i.e. during the continuation of the stay and on dismissal of the petition and/ or vacating the ad-interim stay, the position which was prevailing prior to 18th May, 1999 was required to be restored and the status quo ante was required to be maintained. Therefore, on vacating the exparte ad-interim stay, the effect of the order dated 4th May, 1999 is required to be considered as if there was no stay order and merely because there was ad-interim order which came to be subsequently vacated, the respondents should not be made to suffer because of the ad-interim order. Relying on the decision the Division Bench of this Court in case of UNION OF INDIA AND ANOTHER (Supra), it is submitted that if the

petitioner has got benefit of interim order, the Court is entitled to undo the wrong resulting from interim order.

14. Thus, relying on the aforesaid decisions, it is submitted that because of the exparte ad-interim order which subsequently came to be vacated, the respondents should not be fastened with the liabilities of the subsequent depositors. It is also further submitted that passing of the stay order does not mean that the order of refusal of grant of license was wiped out and/or looses its existence. It is also further submitted that cancellation of registration of co-operative bank in terms of Section-13-C of the Deposit Insurance Act, 1961 takes place automatic by operation of law on the happening of any events referred to under Clause (a) to (i) of Section-13-C and in terms of clause (b) the registration of a co-operative bank as insured bank shall stand cancelled after the bank

has been informed by notice in writing by the Reserve Bank that the bank's license has been cancelled under Section-22 of the Banking Regulations Act, 1949 i.e. in the present case 11th May, 1999 and therefore, on and after 11th May, 1999 there was no liability of the Insurance Corporation to cover the deposit insurance of the depositors who have subsequently deposited their amounts after 11th May, 1999, more particularly, on vacating the ad-interim order.

15. Meeting with the submission on behalf of the petitioner that there will not be any loss to the Insurance Corporation if the relevant date is considered as 19th April, 2000 for the purpose of considering the claims of the depositors as there will be reduction of liability of the Insurance Corporation, it is submitted by Shri Vakil learned senior advocate that that cannot be considered and / or that is not relevant consideration to consider the relevant date for

considering the liability of the Deposit Insurance Corporation as as stated above, the consequences must follow as per Section-13 of the Act, 1961 read with Section-16 and 17. Therefore, it is requested to dismiss the present special civil application.

16. Heard the learned advocates appearing on behalf of the parties.

17. It is not in dispute that the petitioner bank submitted an application for license under Section-22 of the Banking Regulation Act, 1949 in the year 1971 and the petitioner bank continued banking business. By order dated 4th May, 1999 which came to be communicated to the petitioner bank on 11th May, 1999 the petitioner bank was informed by the Reserve Bank of India refusing to grant license under Section-22 of the Act of 1949. Therefore, technically speaking on and after 11th May, 1999 the petitioner bank could not

have carried out the banking business. However, the position is different in the present case. The petitioner bank challenged the decision of the Reserve Bank of India dated 4th May, 1999 communicated on 11th May, 1999 rejecting their application for license under Section-22 of the Act, 1949 before this Court by way of Special Civil Application No.3761 of 1999 on 18th May, 1999 and in the said Special Civil Application the petitioner bank had prayed for stay of the implementation and operation of the order dated 4th May, 1999 in terms of Para-19(B) of the said petition. The learned Single Judge of this Court by order dated 18th May, 1999 granted ex-parte ad-interim stay in terms of para-19(B) of the said petition, meaning thereby, implementation and operation of the order passed by the Reserve Bank of India dated 4th May, 1999 by which the application of the petitioner bank to grant license under Section-22 of the Act was rejected, came to be stayed and under the protection of the

said ad-interim order the petitioner bank continued to carry on banking business till the ad-interim stay came to be vacated by the learned Single Judge of this Court vide order dated 17.4.2000. It appears from the record that under the protection of the said ad-interim order when the petitioner bank continued with its banking business, the position with regard to deposits and deposit holders have been changed substantially. It appears that on 11.5.1999 the petitioner bank had outstanding insured deposit liabilities (less than Rs.1.00 lakh) of Rs.176.44 Lakhs and out of the said deposits, the bank had repaid insured deposits (less than Rs.1.00 Lakh) of Rs.118.96 lakhs during the period from 11.5.1999 to 19.4.2000. It is also further submitted that the bank accepted fresh deposits (of less than Rs.1.00 lakh) for the amount of Rs.83.92 lakhs during the period from 11th May, 1999 to 19th April, 2000 (during the period the bank continued the banking business under the

protection of the exparte stay granted by this Court in Special Civil Application No.3761 of 1999). Therefore, as on date 19th April, 2000 the bank has total insured deposit (of less than Rs.1.00 Lakh) of Rs.141.40 lakhs (Rs.57.48 Lakhs + Rs.83.92 Lakhs). Thus, the insured deposit liability of less than Rs.1.00 lakh came to be reduced from Rs.176.44 Lacs to Rs.141.40 Lacs, meaning thereby, if the insured deposit liability as on 11th May, 1999 is considered, the Deposit Insurance Corporation was required to pay Rs.176.44 Lacs towards the deposit insurance and if the relevant date is considered as 17th April, 2000, the insured deposit liability of the Deposit Insurance Corporation would be Rs.141.40 Lacs. The dispute is with regard to the depositors who have deposited the amount by way of deposits (of less than Rs.1.00 lakh) during the period from 11th May, 1999 to 19th April, 2000 and it is the contention on behalf of the respondents Nos.1 & 2 that the liabilities of the

Deposit Insurance Corporation would be restricted to those depositors / deposits prior to 11th May, 1999 only and those depositors who have subsequently deposited the amount after 11th May, 1999 their deposits would not be covered under the insurance as on vacating the ad-interim stay, the position which was prevailing prior to filing of the petition and / or granting of the ad-interim relief would prevail and therefore, the short question which is required to be considered by this Court is that “what will be the position of those depositors who have deposited their amount by way of fixed deposits (of less than Rs.1 lakh) between 11th May, 1999 to 19th April, 2000 i.e. during the period the petitioner bank continued to carry on its banking business under the protection of the ad-interim stay granted by the learned Single Judge of this Court granted in aforesaid Special Civil Application on 18th May, 1999.

18. It is the contention on behalf of the petitioner bank as well as the Depositors that when the petitioner bank continued to carry on its banking business pursuant to the ad-interim stay granted by this Court vide its order dated 18th May, 1999 and the small depositors have invested their amount, those small depositors should not be made to suffer for no fault of them and for an act of court those small depositors should not be made to suffer. As against this, it is the case on behalf of the respondent Nos.1 & 2 i.e. Reserve Bank as well as Deposit Insurance Corporation that because of the exparte ad-interim stay granted by this Court vide order dated 18th May, 1999, the respondent Nos.1 & 2 also should not be made to suffer and they cannot be fastened with the liability of the deposit insurance of those deposit holders who have invested their amount after 11th May, 1999, more particularly, when the exparte stay order was vacated on 17th April, 2000. It is also their case

that because of the act of the Court granting of exparte ad-interim stay, the respondent Nos.1 & 2 also should not be made to suffer.

19. The effect of interim or interlocutory order and/ or stay of the operation of the order came to be considered by the Hon'ble Supreme Court in case of STATE OF M.P. (Supra) and it is true that the Hon'ble Supreme Court has observed and held in the said judgment that stay of the operation of the order or notification only means the order or notification which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the order or notification has been wiped out from existence and order of stay granting pending disposal of writ petition or suit or other proceedings comes to an end with the dismissal of the substantive proceedings and it is the duty of the Court in such cases to put the parties in same position they would have been but for the interim orders

of the Court. However, unfortunately the aforesaid Special Civil Application No.3761 of 1999 came to be withdrawn subsequently after the exparte ad-interim stay was vacated on 17th April, 2000. However, neither the original petitioner, nor the Reserve Bank of India thought it fit to obtain an appropriate order from this Court with regard to effect of continuation of the stay order which subsequently came to be vacated. Therefore, under the normal circumstances, on vacating the ad-interim stay, the position which was prevailing prior to grant of stay would prevail and/or would be restored. However, at the same time this Court cannot also ignore the subsequent changes which have taken place during the period the exparte party ad-interim stay was in operation, i.e. with regard to the repayment of the deposits to the small deposit holders and further investing of the deposits / amount by the other small deposit holders of which the figures are stated hereinabove.

20. From the judgments and the cited decisions referred to hereinabove, it is the contention on behalf of the petitioners as well as the respondent Nos.1 & 2, more particularly, relying on the legal maxim *“actus curiae neminem gravabit”* which means that an act of court shall prejudice no man and therefore, what is required to be considered by this Court is “whether because of the ad-interim stay order granted by this Court in aforesaid Special Civil Application No.3761 of 1999 when the petitioner bank carried out the banking business and small depositors invested their amount by way of fixed deposits (of less than Rs.1.00 Lakh), they should be made to suffer for no fault of them and/or the Reserve Bank of India and/or Deposit Insurance Corporation should suffer by covering the insurance risk of those deposits ?”. Therefore, the Court is required to strike the balance between the interest of small depositors on one

hand, who have relied upon the exparte ad-interim stay granted by this Court and invested the amount and the Reserve Bank of India and the Deposit Insurance Corporation on the other hand.

21. At this stage the observation of the Hon'ble Supreme Court in case of KANORIA CHEMICALS AND INDUSTRIES LTD. Reported in (1997) 5 SCC 772) in para-12 wherein the Hon'ble Supreme Court has also considered the decision in case of M/S SHREE CHAMUNDI MOPEDS LTD (Supra) made in para-10 of the said decision, is required to be referred to and considered which reads as under :

> “12. As has been pointed out by S.C.Agrawal, J., speaking for a three Judge Bench in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.: (SCC p.9, para 10)*
>
> “While considering the effect of an

interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

22. Therefore, considering the decision of the Hon'ble Supreme Court, when the ad-interim stay was granted by this Court on 18th May, 1999 staying further implementation and operation of the order passed by the Reserve Bank of India

dated 4th May, 1999, the said order would not be operative from 19th May, 1999 till the same is vacated on 17th May, 2000 and therefore, in view of suspension of the said order and/or staying of that order, the Bank could have continued with its banking business and therefore, whatever the transactions have been taken place between 18th May, 1999 to 17th April, 2000, the consequences must follow and those deposit holders who have invested their amount by way of fixed deposits (of less than Rs.1.00 Lakh) should not be made to suffer and they can get benefit of deposit insurance over their fixed deposits (of less than Rs.1.00 Lakh). There is another reason also that when the depositors / investors come to the bank and the bank has continued with its banking business in its routine course, the depositor is not supposed to know whether the bank has been carrying on its banking business pursuant to the ad-interim stay order granted by the Court. The petitioner bank was carrying out the banking

business since 1971 and therefore, small depositors have invested their amount. However, unfortunately, the said interim order was vacated and there was no further order and/ or clarification with regard to the effect of the ad-interim stay and/or vacating of the ad-interim stay order. Thus, for act of the Court in granting of ad-interim stay those small depositors should not be made to suffer. In the present case, suffering of the small depositors is required to be considered against the suffering of the Reserve Bank of India and/or Deposit Insurance Corporation (if any) for the act of the court and in view of the aforesaid ad-interim stay when the petitioner bank continued to do banking business and the small depositors who have deposited their amount by way of fixed deposits subsequently during the interregnum subsequent period, the Court must protect their interest and must do substantial justice.

23. It is also required to be noted that by considering the relevant date as 19th April, 2000 / 17th April, 2000 in the facts and circumstances of the case, the Reserve Bank of India and/or Deposit Insurance Corporation are not likely to suffer. If the relevant date is considered as 11th May, 1999, then the petitioner bank had outstanding insured deposit liability of Rs.176.44 Lakhs. Thus, the Deposit Insurance Corporation was liable to pay Rs.176.44 lacs towards the deposit insurance and if the relevant date is considered as 19th April, 2000 / 17th April, 2000 the insured deposit liability has been reduced to Rs.141.40 lacs only. Thus, if the relevant date for the purpose of considering the insurance liability of the depositors is considered as 17th April, 2000, then those subsequent depositors are likely to be benefited and their interests would be protected, against which, the respondents Nos.1 & 2 – Reserve Bank and Deposit Insurance Corporation are not likely

to suffer any loss. On the contrary, they will be in advantageous position.

24. In normal circumstances, the submission made on behalf of the respondent – Reserve Bank or Deposit Insurance Corporation prima facie seems to be attractive that on vacating the ex-parte ad-interim relief and/or stay, the position which was prevailing prior to granting of ad-interim relief would be restored and/or status quo ante is required to be maintained and subsequently, ad-interim relief is vacated then, the Court is required to pass an appropriate order to protect the interest of the respondents and there is no dispute with regard to proposition of law advanced and submitted on behalf of the respondents. However, as stated hereinabove, no one should be made to suffer for an act(s) of the Court and as observed and held by the Hon'ble Supreme Court in the case of STATE OF M.P. (Supra), it is the duty of the Court to try to

repair the damage to the extent possible. Therefore, considering the facts stated hereinabove that if the relevant date for considering the liability of deposit insurance is considered as 17th April, 2000 i.e. date on which the exparte ad-interim stay was vacated is considered and if it is held and directed to the respondents to consider those deposits / fixed deposits (upto Rs.1.00 Lakh) who have made deposits upto 17th April, 2000 for the purpose of deposit insurance, it will meet the ends of justice in the facts and circumstances of the case on hands and in my opinion, there will not be any prejudice/loss to the respondent Reserve Bank and the Deposit Insurance Corporation in the peculiar facts and circumstances of the case, otherwise, the small depositors who have invested their amount since petitioner bank continued banking business under the protection of exparte ad-interim stay granted by this Court, are likely to suffer for no fault of them.

25. For the reasons stated above, the petition succeeds. The respondents Nos.1 & 2 – Reserve Bank of India and the Deposit Insurance Corporation are directed to consider the claims of the depositors of the petitioner bank for deposit cover under the Deposit Insurance Scheme, 1961 upto 17th April, 2000 under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 on compliance of necessary and requisite formalities, if any, not so far complied with and on considering their claims of those deposit holders i.e. those depositors who have invested and/or deposited the amount in fixed deposit (of less than Rs.1.00 Lakh) with the petitioner bank for the period from 18th May, 1999 to 17th April, 2000 to sanction the amount towards the deposits insurance and to pay the same to them accordingly. The petitioner bank to carry out necessary steps to further complete the necessary exercise for the same and submit the claim of the

aforesaid depositors to the Reserve Bank of India / Deposit Insurance Corporation within a period of one month from today and comply with the other requirements as required under the Act, 1961 and the respondent Nos.1 & 2 are further directed to complete the proceedings at their end within a period of two months thereafter and to pay the deposit insurance to those deposit holders within the aforesaid stipulated time.

26. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

(M.R.SHAH,J.)

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FURTHER ORDER

At this stage, Shri SB Vakil, learned senior advocate with Shri HV Chhatrapati, learned advocate appearing on behalf of respondent Nos.1 and 2 has requested to stay the operation of this judgment and order so as to enable respondent

Nos.1 and 2 to challenge the present judgment and order before the appropriate forum.

Considering the facts and circumstances of the case, the judgment and order passed by this court is stayed upto 30th June, 2006.

13-6-2006 (M.R.SHAH,J.)